78-1193

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1978

DONALD S. CARNOW,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

MELVIN B. LEWIS
315 South Plymouth Court
Chicago, Illinois 60602
(312) 427-2737
Attorney for Petitioner

The Scheffer Press, Inc.—(312) 263-6850

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To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Donald S. Carnow, respectfully prays that this Court's Writ of Certiorari issue to the Supreme Court of Illinois to review the Judgment of that Court which imposed upon Petitioner, an attorney, the penalty of disbarment.

In that behalf, Petitioner here sets forth the information required by Rule 23.

REFERENCE TO REPORTS

Disbarment proceedings in Illinois originate as an administrative hearing before the Respondent Commission. Its Inquiry Board files a complaint before its Hearing Board, which renders a preliminary decision. That decision is submitted to the Commission's Review Board. If the Review Board recommends disbarment, its report is filed before the State Supreme Court, which takes original judicial action in the matter.

The opinions of the Commission's Boards are not publicly reported in any form. The Hearing Board Report is here presented as Appendix A to this Petition and the Report of the Review Board is reproduced as Exhibit B.

The opinion of the Supreme Court of Illinois has been published and appears at 382 N.E. 2d 257 and is here reprinted as Appendix C.

GROUNDS ON WHICH JURISDICTION IS INVOKED

(i) The original judgment of the Supreme Court of Illinois (Appendix C) was entered on October 6, 1978.

(ii) A Petition for Rehearing was timely filed and was denied by order entered on December 1, 1978. (Appendix D) No extension of time for filing this Petition has been requested or granted.

(iii) Jurisdiction to review that judgment by certiorari is conferred under the provisions of Title 28 U.S. Code, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

Where a lawyer, acting as a witness for the United States in federal criminal proceedings, exposes official corruption in State government, and where his testimony

also discloses that he himself, in response to threats of physical and economic harm by a State official, has been guilty of ethical misconduct, may the lawyer be punished in that State with substantially greater severity than persons guilty of more serious misconduct, but, who have not been responsible for federal criminal convictions of officials of that State?

Does such enhanced punishment deny to the lawyer due process of law and equal protection of the law, as guaranteed him by the Fourteenth Amendment? Does it present an improper challenge to the Supremacy Clause of Article VI of the federal constitution?

CONSTITUTIONAL PROVISIONS

Article VI of the Constitution of the United States provides, in relevant part:

> "This Constitution, and the Laws of the United States which shall be made in pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby * * *"

Section 1 of the Fourteenth Amendment to said Constitution contains the following provision:

> "No State shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. The Client's Legal Problem

Joseph Pecord had contracted to buy a building previously used as a Savings and Loan Association. The Association had become insolvent and the Federal Savings

and Loan Insurance Corporation had succeeded to ownership of the building. Pecord desired to convert the property into a nursing home. Initially, Pecord had entered into a purchase agreement with the Illinois Commissioner of Savings and Loan Associations. This contract provided zoning was the exclusive problem of the State of Illinois. Later, this contract was rescinded by operation of law when the Federal Savings and Loan Insurance Corporation was appointed as Statutory Receiver.

A new contract was then negotiated with the Federal Savings and Loan Insurance Corporation. The new contract provided that Pecord would have sole responsibility to obtain the zoning variation from the Chicago officials. The FSLIC wanted nothing to do with acquiring zoning within Chicago. At that point, Pecord had invested more than $150,000 as earnest money and preliminary expenses. The requisite financing could not be obtained without first securing the necessary zoning variation.

Pecord's request for a zoning variation was a modest one; even the Respondent concedes Pecord's entitlement to that relief. (Appendix A, p. 3a) The zoning classification in effect at the time of the contract would have permitted use of the subject property as a sanitarium or as a hospital but not, technically, as a nursing home. The adjacent buildings were, respectively, an animal hospital and a medical office. (Tr. 148).

Although the problem seemed simple and Pecord's position was clearly proper, the situation presented one aspect of potential grimness: If for any reason the zoning variation were not granted, Pecord would lose his initial $150,000 investment. (Tr. 153.)

To resolve the problem, Pecord retained attorney Benjamin Rosenthal, his close friend (Tr. 146). Rosenthal directed Petitioner, a young associate, to make the necessary procedural inquiries.

Neither Rosenthal nor petitioner was sophisticated in zoning matters (Tr. 260, 362, 363), but the problem simply did not appear one whose solution required sophistication.

B. The Client's Political Problem

Two public officials stood between Pecord and the necessary rezoning. Neither of them was motivated by devotion to the public interest.

One was Stanley Zima, then the secretary of the Chicago City Council Zoning Committee. Zima also held the political office known as ward committeeman, a position whose medieval equivalent carried the title of Duke. In the latter position, he was the leader of a group of political office holders whose tenure was dependent on Zima's good will and who were banded together for the purpose of assuring the largest possible favorable vote within Zima's ward for his political party. Many of these were people of known propensities toward violence, whom Zima had from time to time unleashed upon dissident elements within his ward for the purpose of physically beating such persons into submission (Tr. 372-374).

Zima no longer holds either of those offices. His reign was terminated by a federal conviction reflecting a lengthy career of shakedowns of zoning applicants. Petitioner was treated by the federal authorities as a victim of one such shakedown, and was a witness for the government in Zima's prosecution. His testimony against Zima forms the basis for his own disbarment.

Zima had threatened that if petitioner were to disclose Zima's extortionate activities, he would never again practice law in Chicago.

* * *

The other hurdle to rezoning was John Daley, who held the office of Ward Committeeman in the ward in which the subject property was situated. By objecting, he could block any rezoning, since the city counsel would accord him "aldermanic courtesy" with respect to such matters within his ward.

About five years after the Pecord incident, Daley, under the pressure of a federal grand jury subpoena and immunity grant, confessed to a protracted series of shakedowns of zoning applicants. By his testimony, he sought to lay primary blame on a different politician, but the federal trial jury rejected his testimony. *In re Daley,* 549 F. 2d 469. (7 Cir. 1977).

Another member of Daley's family had achieved even greater political prominence. That was Richard J. Daley, mayor of Chicago for a generation. During Daley's tenure, it was virtually impossible to hold most non-federal governmental positions in the Chicago area without at least his tacit approval.

C. The Resolution of Pecord's Problem

Petitioner, on errand from Rosenthal, entered Zima.s lair to learn the procedure for accomplishing rezoning.

He was told by Zima that there would be no rezoning unless Pecord would pay $20,000 to $30,000 to obtain it; otherwise, the rezoning would be blocked by Daley.

Petitioner and Rosenthal rejected Zima's offer and attempted to obtain the rezoning legitimately. Daley appeared and blocked it. The rezoning authorities did not

deny the application. Such denial would have entitled Pecord to seek judicial review of the denial. Instead, the matter was simply taken under consideration leaving Pecord with no remedy whatever in the face of an approaching deadline for contract forfeiture.

Meanwhile, the municipal authorities instituted an alternative method for obtaining rezoning.

Again, Zima demanded his tribute.

Faced with the alternative of economic ruin, Pecord capitulated.

Originally it had been agreed that petitioner and Rosenthal would withdraw from the matter in favor of "zoning counsel" selected by Zima. Zima, however, suddenly demanded that petitioner and Rosenthal see the matter through and personally complete the payment of the monies. He enforced his demands with threats ranging from economic sanctions to physical injury to petitioner's family.

The hearing was held; Daley did not object to the petition; and the rezoning was granted.

Zima then came to Rosenthal's office and received his money.

D. Disclosures to the Federal Authorities

1. *The Federal Savings and Loan Insurance Corporation.*

FSLIC, the vendor of the property, was represented by a lawyer named Nordberg in the state dissolution proceedings administering the assets of the defunct savings and loan association whose former business premises were the subject of the rezoning.

The Illinois Supreme Court correctly notes that Nordberg flatly denied that he was ever informed of any extortive activities directed against Pecord. (Appendix C, p. 14a)

Shortly after the Pecord rezoning, however, Nordberg presented a petition on behalf of FSLIC, seeking to *lower* Pecord's purchase price. That petition was based upon the "rising costs" which Pecord experienced (Exhibit 13).

Appended to Nordberg's petition was a letter from Pecord outlining those increased expenses. The most significant is a $30,000 expense, starkly labeled "Zoning".

Accordingly, Nordberg as attorney for FSLIC was advised that Pecord had been asked to pay $30,000—thirty thousand 1969 dollars—to rezone a building adjacent to an animal hospital, so that it could be used as a nursing home rather than as a sanitarium.

Nordberg, an experienced Cook County practitioner, did not regard this fact as an indication that any zoning shakedown had been practiced against Pecord.

Nordberg is now a state judge (Tr. 428, 442).

2. *The Federal Police Authorities*

Three years after the event, Petitioner learned that the federal authorities were investigating Zima's zoning activities. He contacted the federal agents to make an appointment (Tr. 380-381). Shortly afterward, Zima instructed petitioner to lie to the federal investigators, by denying that Zima had taken money from Pecord. He backed up his demands with threats of physical violence against petitioner and his family. (Tr. 54-56, 96-97, 374-375)

On the morning of petitioner's appointment with the agents—a fact theoretically known only to petitioner and the agents—the petitioner's car was set on fire in the driveway of his home.[1]

Petitioner, yielding to his fears, passed on to the agents the false account which Zima had demanded. He also furnished, through his attorney, a false identity of a decedent as the person to whom Pecord's money had been paid.

3. *Federal Prosecutors*

Very shortly after furnishing the false information, petitioner recanted and told the truthful story. Testifying under immunity grant, he acted as a prosecution witness against Zima. His testimony resulted in Zima's federal conviction and sentence to the penitentiary. (Tr. p. 6).

The same investigation ultimately led to an exposure of Daley's activities. As previously mentioned, Daley then ascribed to a different politician the primary role in the zoning extortion racket. As an immunized federal witness, he testified against the person he thus accused, but that person was acquitted on a jury trial.

Daley, whose testimony disclosed unmitigated corruption on his own part, voluntarily surrendered his license to practice law.

E. The Consequence of Petitioner's Testimony

Petitioner testified against Zima in 1975.

In 1976, a disciplinary complaint was filed against him predicated upon his federal testimony which constituted the entirety of the case in chief against him.

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[1] Other cars had been burned in the general area at about that time. However, there is no suggestion that petitioner was aware of the fact.

The Respondent Commission recommended Petitioner's disbarment on the theory that the petitioner had "knowingly counseled, assisted and participated in conduct which resulted in the crime of extortion." The Illinois Supreme Court entered judgment approving that recommendation.

This petition seeks review of that judgment.

Stage at Which Federal Questions were Raised

At every stage of the proceedings, from the first instant at which the question of penalty was considered, Petitioner argued vigorously that the penalty of disbarment was disproportionate to his conduct and invidious discrimination when compared to disciplinary action taken in comparable situations.

ARGUMENT

We have no quarrel with the entitlement of a state to measure the conduct of the members of its bar in accordance with rigorous ethical standards. Nor do we question the propriety of disbarment as an appropriate sanction where a lawyer engages in extortion.

There is grave doubt that Petitioner is guilty of any form of corrupt misconduct; but the one thing that cannot possibly be said is that he assisted in an act of extortion. As the federal authorities properly concluded, he was a victim, not a perpetrator.

He was victimized by the officials of a state zoning machinery which may be the most corrupt instrumentality in the history of organized government.

In consequence of his disclosure of that corruption, the State has imposed upon him a penalty which is grossly disproportionate to any misconduct ascribed to him, and which lacks all reasonable relationship to the penalty imposed on others in comparable situations.

The range of disciplinary actions available to the Illinois authorities is extremely broad, ranging from censure through suspension to total disbarment. The ultimate sanction—disbarment—has been imposed on Petitioner—although the record stamps him as far less culpable than many others who have received much milder professional discipline in the face of corrupt conduct. The circumstances raise the very real possibility that Petitioner is being punished for his exposure of State corruption, rather than for his essentially innocent relationship to that corruption.

• • •

We repeat our concession: In the abstract, disbarment is an appropriate sanction where a lawyer is guilty of an act of extortion.

Most emphatically, however, we do *not* concede that a state is free to use the label "extortion" to justify the retaliatory disbarment of a lawyer whose testimony exposes criminality within that state's officialdom.

As early as *Yick Wo* v. *Hopkins,* 118 U.S. 356, 373-374, it was held that equal protection of the laws guarantees not only the abstraction of impartial legislation, but also assures the concrete reality of impartial application of the law. The courts have never wavered in this support of that principle. *U.S.* v. *Yingling,* 368 F. Supp. 378, 382. (D.C. Pa. 1973).

Without regard to facial propriety of legislation, where the laws are administered in such a way as to make special targets of those who claim federally guaranteed rights, the courts have found such official discrimination interdicted by the equal protection clause. *Sherbert* v. *Verner,* 374 U.S. 398 (1963) (free exercise of religion); *Reynolds* v. *Sims,* 377 U.S. 533 (1964) (right to vote); *McLaughlin* v. *Florida,* 379 U.S. 184 (1964) (racial discrimination); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) (right to travel).

The opinion below cries for that same reaction. The record fairly shouts that petitioner's conduct is being judged more harshly than would otherwise be the case, simply because his disclosures have resulted in exposure of the misdeeds of specially favored state officials, resulting in the successful federal prosecution of those officials.

Of course, such may not be the case. But the Illinois Supreme Court has shown no meaningful reason for im-

posing the maximum possible penalty upon Petitioner. That sanction is not only disproportionate as a reaction to petitioner's conduct, but is also draconian when compared to the penalties imposed on others more culpable than petitioner. The circumstances strongly suggest an impermissible element of retaliation against petitioner for his testimony as a witness on behalf of the United States.

We ask that this Court consider:

1. The Illinois Supreme Court concedes the existence of substantial relevant mitigation arising through petitioner's "professional accomplishments". (Exhibit C, p. 16a). Yet, notwithstanding such mitigation, it has imposed the ultimate sanction within its power—total disbarment. A proper analogy would be the whimsical and unexplained imposition of the death penalty in a criminal case, notwithstanding acknowledged presence of compelling mitigation. Cf. *Furman* v. *Georgia* 408 U.S. 238 (1972).

2. The Pecord rezoning occurred in 1969. The disbarment proceedings commenced in 1976. It is arguable that they were not commenced at an earlier time because no basis for discipline against petitioner was known to the state authorities until his 1975 federal testimony. But to disbar in 1978 for acts performed in 1969 is to ignore a nine-year period of honorable conduct and total rehabilitation.[2] It may be the newly-declared law of Illinois that such

[2] The 1969 conduct was briefly and minimally compounded in 1972 by the furnishing of false information to federal agents concerning the 1969 event. That misinformation, however, was quickly and voluntarily corrected. Moreover, the respondent commission recommended disbarment on the basis of the 1969 payment to Zima, rather than the 1972 transaction with the federal agents. (See report of the Review Board filed October 3, 1977.)

matters are not to be considered in the imposition of penalties. It is unfortunate, however, that such a significant legal proposition should be declared *sub silentio* in a proceeding to punish a witness for the United States who provided definitive testimony exposing official corruption within the state.

3. The sanction is unreasonable when contrasted with the judgment entered in other cases. Exemplary of our contentions, we cite:

(a) *In re Bourgeois,* 25 Ill. 2d 47 (1962); suspension, possibly subject to extension, for embezzlement of client's funds.

(b) *In re Kayne,* 53 Ill. 2d 410 (1973), one-year suspension for illegal payment to U.S. Internal Revenue Agent for purpose of influencing official actions.

(c) *In re Howard,* 64 Ill. 2d 343 (1978): two-year suspension for twice bribing a policeman to influence his testimony; for stating that other payments would be made to influence the prosecutor and the judge in the case in which the lawyer was appearing; and for lying before the review board.

(d) *In re Leonard,* 64 Ill. 2d 398 (1976); three-year suspension for aiding and abetting bribery, falsifying records and participation, resulting in criminal conviction, in corruption involving the office of the Secretary of State.

(e) *In re Tuttle,* 371 Ill. 153 (1939): a two-year suspension for bribery of the head of the State Tax Commission over a protracted period.

(f) *In re Huff,* 371 Ill. 198 (1939): two-year suspension for protracted course of bribery of the Chairman of the State Tax Commission.

(g) *In re Kein*, 69 Ill. 2d 355 (1978), an effective 12 month suspension for bribing police officer to give favorable testimony in a criminal case.

(h) *In re Sherre*, 68 Ill. 2d 56 (1977): a three-year suspension after Federal conviction of four counts of mail fraud benefitting attorneys more than Sixteen Thousand ($16,000.00) Dollars; and for lying before Hearing Panel.

There is one common factor to each of these (and numerous other) instances of milder penalties than Petitioner's resulting from graver misconduct than that of Petitioner: none of the respondents in those other cases had generated a federal wave to rock the State boat. None of them involved a respondent who had disclosed State corruption to federal officials.

The same may be said of the sanction imposed in *In re Cook*, 67 Ill. 2d 26 (1977). (See also, *State* v. *Cook*, 194 Neb. 364, 232 N.W. 120, for discussion of predicate facts.). In Cook, an effective sixteen-month suspension was imposed in a spectacular case involving the gravest of misconduct at the highest levels, threatening the very structure of the republic. Further comparison is in order:

	Cook	Respondent
Age at time of offense:	45	26
Did offense involve misuse of official status?	Yes	No
Did offense involve misconduct in the face of the court?	Yes	No
Was the lawyer's ultimate testimony rejected by the trial jury as false?	Yes	No
Amount of money mishandled:	$250,000	$20,000

Did the attorney derive meaningful personal gain from his misconduct? Yes No

• • •

The Illinois view of mitigation seems to lack all claim to continuity, unless viewed as a reaction to the single issue whether the disciplinary respondent has exposed corruption within State government.

Youth and inexperience are mitigating factors in Illinois (*In re Agin,* 45 Ill. 2d 126 (1971); *In re Bourgeois,* 25 Ill. 2d 47 (1962). The age of the respondent in *Bourgeois* —31— was considered a mitigating factor in an embezzlement case. The age of this respondent at the time of his offense —26— avails nothing to avert the ultimate sanction.

The emotional state of the respondent in *Bourgeois* was also considered a mitigating factor. The failure of this Respondent to remain steadfast in the face of concededly credible (Appendix A, p. 4a) threats against his wife and children is deemed inexcusable.

The motivation for misconduct is a significant factor for possible mitigation in Illinois, *In re Ahern,* 23 Ill. 2d 69 (1961)—except in the case of Petitioner.

The absence of personal profit is a mitigating factor in Illinois, *In re Steinbrecher,* 53 Ill. 2d 413 (1973), although not with respect to this Respondent.

Commendable prior activities (*In re Walker,* 67 Ill. 2d 48 (1977) will mitigate the penalty in Illinois for other Respondents, as will a substantial lapse of time since the charged offense (*Bourgeois, supra*). But not for this Petitioner.

For this Petitioner (unlike other disciplinary Defendants?) is a lawyer, whose privileged status is held by the Court below to entail a "greater acceptance of responsibility" (Appendix C, p. 16a) than he displayed.

The Illinois court correctly notes that governmental corruption is largely directed against persons represented by lawyers. (Appendix C, p. 16a) The reason for that state of affairs, however, is not a special susceptibility on the part of lawyers to corrupt overtures. Instead, and obviously, private citizens become vulnerable to official corruption, in most cases, precisely because they are in situations sufficiently complex to require the assistance of lawyers. The only choices of the lawyer representing such a client, are to bow to the corrupt demand, or to make of his client a special target of official vengeance.

The one course which was *not* open to Petitioner in response to Zima's extortionate demand, was to reform the entire Illinois political system. That system has rewarded with a judgeship the myopia of Attorney Nordberg, who found no indicia of corruption in a payment of $30,000 for rezoning to which the applicant's entitlement was beyond dispute. That same system has expelled from the legal profession this Petitioner, the net result of whose acts was the federal felony conviction of an extortionist functioning as part of the State zoning machinery.

A specially harsh version of federal law was directed against this Petitioner almost as though designed to retaliate against one whose actions have advanced federal interest over those of the State. The court below cites *U.S.* v. *Kahn*, 472 F. 2d 272 (2 Cir. 1973), for the proposition that yielding to the force of "illegal coercion" should not be considered "a total defense to bribery charges".

The message is a model of clarity: You witnesses for the federal government who testify to corruption in state government, you who like federal law so well, see how well you like *Kahn*. And for such as you, we have a special version of *Kahn*, which deletes the word "total". Thus, in Illinois, illegal coercion by State officials will be no defense whatever, no slightest mitigation of the penalty for misconduct shown by the victim's own testimony as a witness for the federal government in aid of its prosecution of the corrupt official.

Stated otherwise: If any lawyer has knowledge of official corruption in Illinois state government, he had better be certain that his own skirts are spotless; otherwise let him keep silent.

There is one predictable effect of that doctrine. It will certainly reduce the volume of lawyer disciplinary proceedings, as well as the number of successful prosecutions of corrupt state officials. All that without reducing in any slightest degree, the total volume of official corruption.

And thus, all malefactors in the Illinois system will receive equal protection — with the understanding, of course, that some are more equal than others.

* * *

The proceedings commenced without any suggestion that this Petitioner was deemed to fall within the narrow class of disciplinary respondents against whom total disbarment is sought.

The complaint contained no allegation of dishonest, fraudulent or corrupt motivation. Monolithic pronouncements four previous decades had established the proposition that only the most grievous conduct should justify disbarment or lengthy suspension. *In re*: *Smith*, 365 Ill. 11, 5 NE 2nd 227 (1936); *In re: Donaghy*, 402 Ill. 120, 83

NE 2nd 560, 562 (1949). The case law had established that disbarment required both pleading and proof of dishonest, corrupt or fraudulent motive. *In re: Walker,* 67 Ill. 2nd 48, 364 NE 2nd 76 (1977) (Respondent censured in absence of fraudulent intent after conviction for filing false income tax returns); *In re*: *Fisher,* 15 Ill. 2nd 139, 153 NE 2nd 832, (1958) (charges against attorney must be shown to have been fraudulent and result of improper motives — Respondent censured); *In re: Hansen,* 21 Ill. 2nd 326, 172 NE 2nd 172, (1961) (to warrant disbarment or suspension, the record must be free from doubt not only as to the act charged, but also as to the motive to which it was done — Respondent censured); *In re: More,* 8 Ill. 2nd 373, 134 NE 2nd 324, (1956) (Respondent censured); *In re: Lasecki,* 358 Ill. 69, 192 NE 655 (1934) (Respondent discharged); *In Re: Brummund,* 381 Ill. 139, 44 NE 2nd 833, (1942) (to warrant either disbarment or suspension the record must be free, not only from doubt as to the act charged, but also as to the motive with which it was done.)

As previously noted, the Complaint made no such allegation. Indeed, it did not even contain a prayer for disbarment; there was only a modest request "for such discipline of the Respondent as is warranted . . ." (Appendix E). Every indication, in short, that Respondent would be treated as a technical violator at worst, entitled to the lenity mandated by Illinois law, in recognition of his status as, essentially, a victim.

Only at the moment of judgment did it become apparent that the garden path led to an open grave.

THE ONLY ARTICULATED FACTOR OF AGGRAVATION

As against volumes of mitigation, the Illinois Court cites only one aggravating factor: the proposition that the Petitioner was an assistant state Attorney General, and thus "a law officer". But Petitioner was the rawest of neophytes, and his employment in the Attorney General's Office was totally unrelated to any activity involving criminal law. (Tr. 257-260) At that time, indeed, nobody in any division of the State Attorney General's Office performed any function related to criminal law enforcement in Cook County.

Petitioner, accordingly, although a nominal Assistant Attorney General, was in fact only a publicly-employed lawyer doing routine civil work in matters in which the State was a party. There was nothing about his duties which caused him to be treated as a "law officer", or to think of himself or to behave as such.

The tenuous claim that Petitioner was a "law officer" will not obscure the true lesson of this case. That lesson is too incandescent to be less than clear to the next person asked by federal authorities to disclose his knowledge of the misconduct of state officers.

• • •

Petitioner's status as a lawyer impressed him with a duty toward Pecord which was of no lesser force than was his duty toward the State. Canon 4 of the ABA Code of Professional Responsibility, replicated verbatim as Disciplinary Rule 4 of the Illinois Code, burdened him with an obligation to protect Pecord's "secrets" no less than his "confidences." A "secret", under the code, is a fact whose disclosure would prove "embarrassing or would be likely detrimental" to the client. (Appendix F.)

The Court below proceeds in complete disregard of this obligation. Canon 4, however, has consistently been treated as substantive law, and not as mere rhetoric. *Emile Industries* v. *Patentex, Inc.*, 478 F. 2nd 562 (2nd Cir. 1973); *Schloetter* v. *Railoc of Indiana, Inc.*, 546 F. 2nd 706 (7 Cir. 1976); *Richardson* v. *Hamilton*, 469 F. 2nd 1382 (3rd Cir. 1972); and *People* v. *Belge*, 372 N.Y.S. 2d 798, Aff'd. 376 N.Y.S. 2d 771.

The opinion here presented for review notes that Petitioner's employer, one Rosenthal, disclosed the extortionate demand to the FSLIC and states that such action is inconsistent with any claim of reliance on an obligation of silence. (Appendix C, p. 17a) The disclosures to the FSLIC, however, were made by Pecord himself (Exhibit 13), and the FSLIC reacted by reducing his purchase price in order to accommodate the payment. It cannot reasonably be concluded from that episode, that Pecord would have authorized disclosures which might have reached the ears of persons whose reaction would be likely to stimulate retaliation by Zima. Even if Pecord's disclosures to the FSLIC removed the fact from the category of professional confidences, the activity remained a client's "secret" under Canon 4, and its disclosure to persons other than the FSLIC were governed by the strictures of that Canon.

REPRISE

John Daley was also a lawyer. In contemplation of using him as a witness, the federal prosecutor expressly sought to remove him from the retaliatory jurisdiction of the Respondent Commission. The prosecutor "was concerned *because of prior incidents* that efforts might be made to pressure the witness Daley by threats of administrative action into not testifying or to testifying falsely,

In re: Daley, 549 F. 2d 469, 473 (7 Cir. 1977) (Emphasis added)

The prosecutor's fear was realistic. Zima, a corrupt state official at a relatively low level, felt free to threaten that any person who might expose his corruption "would never again practice law in Chicago." (Appendix C, p. 12a).

Zima was right.

Appropriate Relief

We pray that the judgment below be vacated and the cause remanded for such further proceedings as may be necessary to insure that any action taken against Petitioner shall be shown not to be the product of retaliation for his testimony on behalf of the United States.

Respectfully submitted,

Melvin B. Lewis
315 South Plymouth Court
Chicago, Illinois 60602
(312) 427-2737
Attorney for Petitioner

APPENDIX A

BEFORE THE HEARING BOARD
OF THE
ATTORNEY DISCIPLINARY SYSTEM
UNDER ILLINOIS SUPREME
COURT RULES 751-770

In the Matter of:

DONALD S. CARNOW,

Attorney-Respondent,

No. 76-CH-36

and

BENJAMIN JULIAN ROSENTHAL,

Attorney-Respondent.

No. 76-CH-37

REPORT OF THE HEARING PANEL
ALLEGATIONS OF THE COMPLAINT

1. Donald S. Carnow was licensed to practice law in Illinois on November 29, 1967 and is still so licensed. Benjamin Julian Rosenthal was licensed to practice law in Illinois on November 17, 1952 and is still so licensed.

2. Respondent Rosenthal employed Respondent Carnow as an associate attorney from 1969 until March of 1971 when Respondent Carnow was admitted into Respondent Rosenthal's partnership. Respondents continued to practice in partnership. The Respondents respresented Joseph R. Pecord in connection with the purchase and rezoning of a property known as the Beverly Savings and Loan Building, 8001 South Western Avenue, Chicago, Illinois.

3. Pecord had planned to convert the Beverly building into a nursing home and in January, 1969 entered into a contract with the Federal Savings and Loan Insurance

Corporation to purchase the building. Pecord had invested considerable sums of money in the Beverly building and the contract further provided for forfeiture of a $50,000.00 down payment should he not perform. The building could not be used as a nursing home at that time because it was not zoned for that purpose.

4. The Respondents undertook to change the zoning of the Beverly building so that it could be used as a nursing home. On May 13, 1969 they filed a petition with the Chicago City Council seeking a zoning amendment. That petition was referred to the Committee on Building and Zoning of the Chicago City Council which scheduled a public hearing on the petition for June 20, 1969.

5. On or about June 18, 1969, Stanley Zima, who was then Secretary to the Committee on Building and Zoning met with the Respondents and told them that their petition would be denied. Zima further told Respondents that there was then pending before the City Council an ordinance which would permit the Board of Zoning Appeals to grant the zoning change. Zima also told Respondents that with his help a zoning variance could be obtained but that his help would cost between $20,000.00 to $30,000.00.

6. The public hearings by the Committee on Building and Zoning were held as scheduled on June 20. The Committee made no recommendation, which in fact defeated the petition. The City Council passed the ordinance about which Zima had informed the Respondents, thus allowing the Board of Zoning Appeals to grant zoning variances.

7. The Respondents decided to use the new variance procedure and agreed to make the payment that Stanley Zima stated would be required. Zima was told this during the last week of July, 1969.

8. Zima on or about September 3, 1969 gave Respondents instructions as to how the $20,000.00 payment was to be made to Zima. The actual instructions were given to Respondent Carnow but the Respondent Rosenthal was fully informed of them. The instructions in their essential part were that Pecord should place $20,000.00 in cash in

an envelope, write his name across the flap and turn the envelope over to Respondent Carnow who would take the envelope containing the $20,000.00 to the lobby of the American National Bank where he would give it to the waiting Zima.

9. The instructions were followed except that Zima did not appear on September 4, 1969 but did appear at Respondents' office the next day, at which time he received the envelope containing the $20,000.00 from the Respondents.

ANSWER

The essential elements of the Complaint as stated above have been admitted by the Respondents. Their answers contain substantial additional affirmative information and defenses which will be discussed in part hereafter.

FINDING OF FACT

1. There is no question but that the Respondents were retained by Pecord for a lawful legal purpose, i.e. to obtain a zoning variance. Further, there is no question that Pecord's intentions were honorable and his desire to convert the Beverly building to a nursing home was a laudable thing.

2. Had the Respondents failed to obtain the zoning variance their client, Pecord, would have lost considerable sums of money. It was, therefore, of great importance that the Respondents succeed.

3. Based on the record before us, we find that Pecord was entitled to the zoning variance he requested but that the variance was denied him because of political implications brought forward by the Ward Committeeman.

4. Stanley Zima, then the Secretary to the Committee of Building and Zoning was in a position to see to it that Pecord's request for a variance was either granted or denied. Zima demanded $20,000.00 for this "assistance" which meant that unless the extortion money was paid, no variance would be granted.

5. Respondents maintain that they counseled their client against paying the money to Zima. The Hearing Panel finds this immaterial since the money was paid and the Respondents played an active role in paying it.

6. Respondents maintain and it is probably believable that they and their families were threatened by Zima with economic and bodily harm and that their client was threatened.

7. Twenty Thousand Dollars ($20,000.00) in cash was placed in an envelope, across the seated flap of which Pecord wrote his name. This envelope was delivered by Respondents to Stanley Zima in payment for the favorable zoning variance they had obtained.

8. About three years later the Internal Revenue Service commenced an investigation of Pecord's finances and as a result of which Respondent Carnow met with two agents of the Internal Revenue Service and was questioned by them regarding the $20,000.00 payment to Zima. Carnow evaded telling the agents the truth.

9. In September, 1972 Respondent Carnow told his attorney that the $20,000.00 payment was made to a deceased Horace Gardner. This information was communicated by Respondent's attorney to the federal agents. Respondent Carnow confessed his misrepresentation to the federal agents.

10. Respondents cooperated with the federal investigation and with the United States Attorney in obtaining an indictment of Stanley Zima and as witnesses during the trial which resulted in the conviction of Zima for extortion.

11. Respondent's cooperation with the federal authorities before the Grand Jury and at trial was under a grant of immunity.

CONCLUSIONS OF FACT AND LAW

1. The Respondents, by their failure to come forward and notify the proper authorities knowingly concealed and failed to disclose the existence of criminal activity.

2. The Respondents knowingly counseled, assisted and participated in conduct which resulted in the furtherance of the crime of extortion.

3. The Respondents knowingly engaged in conduct prejudicial to the administration of justice and their conduct adversely reflected on their fitness to practice law.

4. The Respondents engaged in conduct involving the appearance of impropriety.

5. The above described conduct of the Respondents was unethical and unprofessional and brought the legal profession into disrepute.

6. Two members of the Hearing Panel concluded as a matter of law that the grant of immunity to the Respondents barred the Administrator from proceeding against Respondents before the Attorney Disciplinary System. However, the decision of the United States Court of Appeals for the Seventh Circuit in In Re John M. Daley 76-1657 decided February 11, 1977 held that the grant of immunity by a Federal Court did bar the Administrator from so proceeding. The Hearing Panel is bound by this decision.

7. Respondents must be disciplined.

RECOMMENDATION

The members of the Hearing Panel, therefore, recommend that the Respondents Donald S. Carnow and Benjamin Julian Rosenthal be disbarred.

/s/ .....
Chairman of the Hearing Board
Pane 1 Cook County

Approved:

/s/ .....

/s/ .....

/s/ Lawrence L. Kotin

Being all of the Members of the Panel

APPENDIX B

BEFORE THE REVIEW BOARD
OF THE
IILINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

DONALD S. CARNOW,

Attorney-Respondent,

No. 76-CH-36

and

BENJAMIN JULIAN ROSENTHAL,

Attorney-Respondent.

No. 76-CH-37

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

This matter comes before the Review Board on a recommendation of the Hearing Board that Donald S. Carnow and Benjamin Julian Rosenthal, Respondents, be disbarred.

Exceptions filed on behalf of the Respondents take issue with the Hearing Panel's finding that "Respondents knowingly counseled, assisted and participated in conduct which resulted in the crime of extortion. . ." This contention is without merit. The evidence is clear and convincing that the attorneys "maintained contact with the extortionist (Tr. 32-35); that they freely aided the extortionist by communicating his demands to their client (Tr. 90, 93, 180, 62); "and that they did not withdraw their

representation of Joseph R. Pecord when it became apparent that he would submit to the extortion.

Respondent Donald S. Carnow admits in his amended Exceptions that "By and large Respondent agrees with the conclusions that certain apparent unethical casts were done with his knowledge." However, he contends they were not performed willfully. This position is unsupported by the evidence.

The Board has reviewed and evaluated the record below and finds that it evidences a full, fair and complete hearing on all the issues presented.

There is is ample evidence to support the findings of the Hearing Panel and therefore the Board affirms its findings.

Participation by an attorney in an extortion is an offense which warrants disbarment; in the absence of any redeeming conduct on the part of Carnow and Rosenthal there is not a basis for a modification of the penalty recommended by the Panel.

It is the unanimous recommendation of the Review Board that Donald S. Carnow and Benjamin Julian Rosenthal be disbarred.

Respectfully submitted,

Martin L. Silverman, Chairman
Donald A. Morgan
Chester L. Blair
Robert P. Cummins
Thomas D. Nyhan
John T. Perry
Marshall A. Susler
C. William Fechtig
Members, Review Board

APPENDIX C

OPINION

SUPREME COURT

OF ILLINOIS

United States of America

State of Illinois)
Supreme Court) ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of September in the year of our Lord, one thousand nine hundred and seventy-eight, within and for the State of Illinois.

Present: Daniel P. Ward, *Chief Justice*
Justice Robert C. Underwood
Justice Howard C. Ryan
Justice Thomas J. Moran
Justice Joseph H. Goldenhersh
Justice William G. Clark
Justice Thomas E. Kluczynski
William J. Scott, *Attorney General*
Louie F. Dean, *Marshal*
Attest: Clell L. Woods, *Clerk*

Be It Remembered, that afterwards, to-wit, on the 6th day of October, 1978 the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

In re:
No. 50098
Donald S. Carnow and
Benjamin Julian Rosenthal,
Attorneys
} Disciplinary Commission

Clell L. Woods
Clerk of the Supreme Court
State of Illinois

Docket No. 50098—Agenda 8—May 1978.

In re BENJAMIN JULIAN ROSENTHAL *et al.*, Attorneys, Respondents.

Mr. JUSTICE MORAN delivered the opinion of the court:

This disciplinary proceeding comes before us on exceptions to the report and recommendation of the Review Board of the Attorney Registration and Disciplinary Commission, which approved the hearing panel's recommendation that respondents, Benjamin J. Rosenthal and Donald S. Carnow, be disbarred. That recommendation resulted from a complaint filed by the Administrator of the Commission against the respondents charging them with unethical conduct by their participation in and facilitation of an extortion scheme perpetrated against their client by a public official. The complaint charged that the respondents had concealed or knowingly failed to disclose the existence of criminal activity; counseled and knowingly participated in activities in furtherance of the crime; engaged in conduct that was prejudicial to the administration of justice and which adversely reflected on their fitness to practice law; and engaged in conduct which had the appearance of impropriety. Respondent Carnow was additionally charged with making false and misleading statements to Federal investigating agents.

In 1969, Rosenthal represented Joseph R. Pecord in matters concerning the purchase and use of a bank building, located in the city of Chicago and owned by the Federal Savings and Loan Insurance Corporation (FSLIC), which building Pecord intended to convert into a nursing home. Because the property was not zoned for such use, a zoning variance had to be obtained. The purchase contract, which had a closing date of July 1, 1969, was not contingent upon Pecord's success in securing rezoning. Failure to complete the contract would result in Pecord's forfeiture of his $50,000 down payment and other preparatory expenditures incurred by him.

In 1969, Carnow, a 26-year-old, full-time assistant Attorney General, was serving Rosenthal as a part-time

associate on a space-for-service basis. In April of that year, Carnow, on Rosenthal's behalf, visited the office of the city council's Committee on Building and Zoning (Committee) and acquired information concerning procedures for seeking rezoning and obtaining an early hearing date. While at the Committee's office, Carnow met Stanley Zima, the secretary of the Committee. Carnow, who had been formerly acquainted with Zima, explained the nursing home project to him. Before Carnow left, Zima offered to assist him and Rosenthal in drafting their petition. Respondents accepted Zima's assistance. A petition was thereafter filed and a hearing date was set for June 20, 1969.

On or about June 17, 1969, Carnow received a call from Zima. Zima told Carnow that their petition was doomed because the ward committeeman and several neighborhood residents were opposed to the rezoning. Zima offered to help but told Carnow it would cost their client some money.

Carnow related this information to Rosenthal, and respondents arranged a meeting with Zima for the following day. At the meeting, Zima repeated to Rosenthal that which he had previously told Carnow. Zima informed the respondents of a zoning ordinance which was pending before the city council, and said that, if passed, the ordinance would permit respondents to bypass the Committee and file directly with the zoning board of appeals. Zima indicated that, to assure the ordinance's passage, he would have to undertake, on Pecord's behalf, "multiple obligations" of $20,000 to $30,000. Pecord could pay the money either as a political contribution or as attorney fees. Respondents rejected Zima's suggestion and indicated that they would proceed to the Committee's hearing on the merits of their case.

On June 20, 1969, several citizens and a ward committeeman appeared at the hearing and objected to Pecord's petition. The Committee deferred action on the petition and thereby deprived respondents of a final order from which they could appeal. (The petition was ultimately denied.)

Rosenthal met with Pecord after the hearing and informed him that he, Rosenthal, had been forewarned that objectors would be at the hearing. Rosenthal did not tell Pecord of the conversation with Zima, but did discuss the possibility of pursuing the zoning board of appeals route should the city council pass the pending ordinance. Rosenthal suggested to Pecord that they contact FSLIC officials for an extension.

Several days after the hearing, Zima contacted Carnow and told Carnow that the zoning ordinance had passed. Carnow related this information to Rosenthal, who expressed his enthusiasm at the prospects of obtaining the needed zoning variance on its merits. Rosenthal filed his zoning petition with the administrator of the zoning board of appeals and, at Pecord's request, dictated a letter to the FSLIC requesting an extension. A limited extension was obtained.

In a series of phone calls during the next few weeks, Zima informed Carnow, in substance, that Pecord would never get his rezoning unless Pecord accepted Zima's assistance. Zima stated that he would supply Pecord with "special zoning counsel" who would accept Pecord's pay-payment as "attorney fees." Carnow related these conversations to Rosenthal, and Rosenthal, for the first time, informed Pecord of Zima's demand.

During the interim, the zoning board of appeals administrator recommended that Pecord's petition be denied.

Efforts toward obtaining further extensions on the contract with FSLIC failed. During the final weeks of July, Rosenthal and Pecord discussed Zima's offer. Rosenthal, according to his testimony at the disciplinary hearing, counseled Pecord against agreeing to Zima's demands and encouraged Pecord to seek further extensions to afford them time to seek review in the courts, if necessary. Rosenthal advised Pecord that if Pecord agreed to Zima's proposal, he, Rosenthal, would have to withdraw from the case. (Thomas Gordon, an acquaintance of Pecord's, was present during this conversation and corroborated Rosen-

thal's testimony.) Pecord, however, decided to accept Zima's offer of "assistance" in return for the promised zoning.

Rosenthal did not withdraw but, instead, instructed Carnow to inform Zima of Pecord's decision. (Rosenthal specifically told Carnow that "If [Zima] can help us and if he can keep it down to $20,000 or less and we get the rezoning and our client doesn't have to pay any additional monies unless we get rezoning, let's go ahead, but we have got to act fast. Otherwise he loses everything.") Carnow informed Zima of Pecord's decision. As instructed, the respondents filed a petition to have the zoning board of appeals review their administrator's adverse recommendation. A hearing date was set for August 26, 1969.

Thereafter, Rosenthal and Carnow discussed withdrawing from the case, and they agreed that, unless Zima provided Pecord with "special zoning counsel" as promised, they would withdraw. Rosenthal instructed Carnow to arrange for Zima to meet with them to inform them of the identity of the special counsel. On August 15, 1969, the three met. Zima informed the respondents that there would be no special counsel and that his "obligations" were now theirs. Rosenthal objected and indicated he would go to Federal authorities, to which Zima responded that if Rosenthal did so, he and Carnow would never again practice law in the city of Chicago.

The respondents did not withdraw, and, on or about August 26, 1969, the zoning board of appeals approved Pecord's petition for rezoning. No objectors appeared at the hearing before the zoning board of appeals. Thereafter, Zima demanded payment. Before making payment, respondents required Zima to provide them with proof of the zoning board's decision. Zima did so; the money was obtained, and the payment was made in Rosenthal's law office.

In 1972, Federal agents, pursuant to a lead, discovered several of Pecord's checks which were marked "rezoning." Carnow learned of the investigation through Rosenthal and contacted two Federal agents to arrange for a meet-

ing. Before that meeting could take place, Carnow, while at city hall, happened by chance to see Zima. Zima instructed Carnow to tell the agents that the money had been paid to a person who had since died. He threatened Carnow and Rosenthal with physical harm if they did not do as they were told. On the day prior to Carnow's meeting with Federal agents, Carnow's auto was set afire. (It was later learned that several such fires had occurred in Carnow's neighborhood during the previous weeks.)

When Carnow met with the agents, he told them he knew nothing about a payoff and stated that he had had very little to do with the Pecord rezoning.

After that meeting, Carnow retained private counsel. Both Carnow and Rosenthal obtained immunity from prosecution in exchange for their testimony against Zima. Zima was convicted in the Federal district court of extortion and income tax evasion.

At the hearing before the hearing panel, several reasons for the failure to withdraw or disclose the criminal activity were offered by Carnow, *e.g.*, deference to Rosenthal's judgment, fear for his own safety, and possible economic repercussions from within city hall. Carnow stated that he had heard of acts of violence within Zima's ward, acts allegedly fostered or encouraged by Zima, and believed that Zima was capable of carrying through with his threats. He stated that, during the summer of 1972, he and Rosenthal had a disagreement over whether they should come forward with information regarding the extortion, but that Rosenthal had indicated he would consider any such disclosure a breach of their attorney-client relationship. Carnow admitted that he had not been forthright with the agents, but contended that, during the summer of 1972, he was under a great deal of stress. The latter statement was corroborated, to some extent, by Carnow's psychologist.

A number of witnesses appeared on Carnow's behalf and testified to his reputation for honesty, integrity and service to the community. Affidavits were also presented from persons who would have similarly testified if called.

Rosenthal admitted that he did not reveal the crime to prosecutorial authorities but testified that, both before and after the payment to Zima, he had informed certain FSLIC officials of the extortion scheme hopeful that they would intercede on Pecord's behalf. (No FSLIC official, however, was called to substantiate this claim.) John A. Nordberg, an attorney who represented the FSLIC in the Pecord contract matter, testified that he had never been informed of any extortion plot against Pecord.

Like Carnow, Rosenthal offered several reasons for his failure to withdraw and his failure to disclose the crime. Among the reasons were the attorney-client confidentiality requirement, the political realities that allegedly existed at that time, and the possibility of economic or physical repercussions being brought against him or his client.

In mitigation, Rosenthal detailed his participation in professional and community service organizations. Several individuals testified as to Rosenthal's good reputation, and affidavits from other individuals, attesting to the same, were introduced into evidence.

Among its findings of fact, the hearing panel found that respondents were retained by Pecord for the lawful, legal purpose of obtaining a zoning variance; that, on the record before them, it appeared Pecord was entitled to the requested zoning variance but that his original petition was denied because of "political implications," that it was irrelevant that respondents had counseled their client against paying Zima's demand since the money was, in fact, paid and respondents played an active role in such payment. The panel further found that it was "probably believable that [respondents] and their families were threatened by Zima with economic and bodily harm" and that their client was also threatened. The panel concluded that Carnow had evaded telling the truth to Federal agents, that respondents had concealed criminal activity by failing to notify proper authorities, and that they knowingly counseled, assisted and participated in conduct which resulted in the furtherance of the crime of extortion.

On review before the Review Board, respondents took exception, *inter alia,* to the hearing panel's finding that they knowingly counseled, assisted and participated in conduct which resulted in the crime of extortion. The Review Board agreed with the hearing panel's findings of fact. The Review Board held that the evidence clearly established that respondents maintained contact with the extortionist; that they freely aided the extortionist in communicating his demands to their client; and that they did not withdraw their representation of Pecord when it became apparent that he would submit to the extortion. The Review Board concluded that "Participation by an attorney in an extortion is an offense which warrants disbarment • • •."

Here, respondents maintain that they are not legally or morally responsible for their conduct inasmuch as they were the unwilling victims of Zima's extortion demands. Their assertion that they, out of fear for their own safety and economic well-being, had no choice but to follow through with Zima's scheme is unpersuasive. Even if we assume that some sort of veiled threat was made against the respondents during their August 15 meeting with Zima, such threat would not explain or justify respondents' voluntary participation in the case prior to that date or their attempt to facilitate retention of "special zoning counsel" for Pecord. Furthermore, requiring the extortionist to produce proof of his misdeeds as a condition of payment does not seem the likely act of individuals acting under duress. Rather, it appears to be the act of persons seeking a guarantee that their client has received the service for which they had bargained.

The court, in *United States* v. *Kahn* (2d Cir. 1973), 472 F.2d 272, 278, aptly noted:

> "Almost every bribery case involves at least some coercion by the public official; the instances of honest men being corrupted by 'dirty money,' if not nonexistent, are at least exceedingly rare. The proper response to coercion by corrupt public officials should be to go to the authorities, not to make the payoff.

> Thus, unless the extortion is so overpowering as to negate criminal intent or willfulness, we would be loath to allow those who give in to the illegal coercion to claim it as a total defense to bribery charges."

Respondents assert, however, that had they notified authorities, their disclosure would have, at that time, fallen on politically deaf ears and could have possibly resulted in retaliation by political forces against them or their client. This is not only a wholly unacceptable excuse but, in fact, is specifically refuted, in part, by respondent Carnow's attorney, Joseph Lamendella, who testified that, based on his past experience in the United States Attorney's office, disclosure of Zima's activities would have been promptly acted upon.

Corruption within government could not, in most instances, thrive but for those few attorneys, who, like respondents, are willing to tolerate such illegal activity if it will benefit their client. The practice of law is a privilege and demands a greater acceptance of responsibility and adherence to ethical standards than respondents have demonstrated. Their conduct, in facilitating and participating in the paying of money to Zima, was clearly a breach of required professional conduct. Their activities discredited the integrity of the bar and impeded the administration of justice. For these reasons, we find that discipline must be imposed.

Respondent Carnow maintains that he should be disciplined less severely than respondent Rosenthal inasmuch as Pecord was Rosenthal's client, and he, Carnow, merely followed his employer's directions. Respondent Carnow has apparently overlooked the fact that, during his involvement herein, he was serving as an assistant Attorney General. Despite his obligations as a law officer, he knowingly participated in and furthered conduct which he knew to be illegal, and then, further, deliberately misled Federal agents. That Carnow was under emotional stress at the time does not excuse his failure to be forthright. In mitigation, however, we recognized Carnow's previous professional accomplishments.

We have also considered respondent Rosenthal's evidence in mitigation and his contention that, as an attorney, he was duty bound not to abandon his client in a time of need and was obliged to avoid actions which would, potentially, cause his client harm.

One of Rosenthal's excuses for not informing prosecutorial authorities is that such disclosure would have breached required attorney-client confidentiality. If Rosenthal, as he testified, informed certain FSLIC officials of the extortion scheme in the hope that they would intercede, it seems rather inconsistent to now argue that disclosure to some public authorities, but not to others, would constitute a breach of the confidentiality requirement. Whatever reasons Rosenthal might have had for not disclosing the criminal activity to individuals in a position to take direct action, it does not appear that scrupulous observance of an alleged attorney-client confidentiality requirement was one of those reasons. Without Rosenthal's assistance as an intermediary, Zima would have had considerably more difficulty in carrying out his scheme. We find Rosenthal's continued participation in the extortion plans to be without justification.

Accordingly, it is ordered that respondents be disbarred.

Respondents disbarred.

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

APPENDIX D

ILLINOIS SUPREME COURT

Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

December 1, 1978

Mr. Joseph A. Lamendella
Attorney at Law
Suite 801
79 W. Monroe Street
Chicago, IL 60603

No. 50098 - In re: Donald S. Carnow and Benjamin Julian Rosenthal, Attorneys. Disciplinary Commission.

The Supreme Court today denied the petitions for rehearing in the above entitled cause. Mr. Justice Clark took no part.

Very truly yours,

Clell L. Woods
Clerk of the Supreme Court

APPENDIX E

BEFORE THE HEARING BOARD
OF THE
ATTORNEY DISCIPLINARY SYSTEM
UNDER ILLINOIS SUPREME
COURT RULES 751-770

In the Matter of:

DONALD S. CARNOW,
Attorney-Respondent.

Administrator's No. 76-CH-36

COMPLAINT
(Filed Oct 7 1977)

Carl H. Rolewick, Administrator of the Illinois Attorney Disciplinary System, complains of the Respondent, Donald S. Carnow, and alleges that the Respondent, who was licensed to practice law in Illinois on November 29, 1967, and is still so licensed, has been guilty of conduct which tends to bring the legal profession into disrepute as follows:

1. At all times relevant to the matters hereinafter set forth, Respondent, together with his law partner, Benjamin Rosenthal, represented a client named Joseph R. Pecord, in legal matters arising from the purchase and rezoning of a parcel of improved real estate, commonly known as the Beverly Savings and Loan Building ("Beverly Building"), 8001 South Western Avenue, Chicago, Illinois.

2. Planning to convert the Beverly Building into a nursing home, Pecord, in January, 1969, entered into a

contract with the Federal Savings and Loan Insurance Corporation to purchase said building. The contract provided that a failure of the buyer to complete the purchase would result in a forfeiture of his $50,000.00 down payment. Use of said building as a nursing home was not permitted under the provisions of the zoning ordinance of the City of Chicago and the contract to purchase was not made contingent upon a change in that zoning.

3. On or about May 13, 1969, the Respondent and Rosenthal filed in the Chicago City Council a petition seeking an amendment of the zoning ordinance which would rezone the area from B4-2 to R4 which in turn would permit the use of the Beverly Building as a nursing home. The petition was referred to the Committee on Building and Zoning of the Chicago City Council which scheduled public hearings on the petition for June 20, 1969.

4. On June 18, 1969, Stanley Zima, Secretary to the Committee on Building and Zoning, met with Respondent and Rosenthal and told them that their petition was doomed but that there was pending before the City Council an ordinance which would permit the Board of Zoning Appeals to grant a zoning variance for nursing homes. Zima, assuming passage of that ordinance, further stated that with his help a zoning variance would be obtained but that his help would cost $20,000.00 to $30,000.00 and that the payment could be made as a political gift or as attorney's fees.

5. Public hearings were held as scheduled on Respondent's petition, but the Committee refused to recommend the petitioner's passage and the City Council defeated it. The Council, however, did pass the aforementioned ordinance allowing the Board of Zoning Appeals to act on special zoning variances for nursing homes.

6. Respondent, Rosenthal, and their client, Pecord, decided to forego litigating the City Council's action on their petition and to use the new variance procedure. Respondent further agreed to assist his client in making the payment which Stanley Zima had stated would be required to assure the desired zoning variance. Respondent communicated these decisions to Zima during the last week in July, 1969.

7. On July 31, 1969, the application for a special zoning variance was filed with the Board of Zoning Appeals by the Respondent and Rosenthal on behalf of their client. The Board approved the special zoning variance on August 26, 1969.

8. Respondent met with Stanley Zima on September 3, 1969, at Toffenetti's Restaurant, to receive instructions as to how the $20,000.00 payment was to be made to Zima.

9. At this meeting it was agreed that Respondent would meet Zima the next day in the lobby of the American National Bank at which time he would turn over to Zima $20,000.00 in cash in a sealed envelope with the name Joseph R. Pecord written across the flap.

10. On September 4, 1969, Respondent accompanied Pecord to the Michigan Avenue National Bank where, as instructed, Pecord had $20,000.00 of cashier's checks converted into cash, placed the currency in an envelope, wrote his name across the flap, and turned over the envelope to Respondent who thereafter took the envelope containing the $20,000.00 to the lobby of the American National Bank where he waited for Zima. Zima never appeared on September 4, 1969, but arrived the next day at Respondent's law office where he received the envelope containing the $20,000.00 from Rosenthal in the presence of the Respondent.

11. Three years later, on July 17, 1972, the Respondent met with agents Nealon and Curran of the Internal Revenue Service and when he was questioned by them regarding the $20,000.00 payment made to Stanley Zima, he stated that he knew nothing of it.

12. Then, in September of 1972, Respondent told his attorney that the $20,000.00 payment was made to a decedent by the name of Horace Gardner. Respondent made this statement knowing that his attorney was meeting with federal agents and would convey this story to them. Respondent subsequently confessed his misrepresentations to the federal agents and cooperated with them and the U.S. Attorney and testified under a grant of immunity in the subsequent prosecution of Zima.

13. By reason of the hereinabove described conduct, the Respondent has:

(a) concealed or knowingly failed to disclose or come forward with information about the existence and commission of criminal activity;

(b) counseled and knowingly assisted and participated in conduct which resulted in the furtherance of a crime;

(c) made or caused to be made false and misleading statement to federal investigating agents;

(d) engaged in conduct that obstructed the due administration of justice;

(e) engaged in conduct that is prejudicial to the administration of justice and that adversely reflects on his fitness to practice law;

(f) engaged in conduct involving the appearance of impropriety.

Wherefore, the Administrator prays that this case be assigned to a Panel of the Hearing Board for Cook County, that a date for a hearing on this complaint be set, that the hearing be conducted by such a panel, that the panel make findings of fact and conclusions of fact and law, and a recommendation for such discipline of the Respondent as is warranted by its findings.

Carl H. Rolewick, Administrator
Attorney Disciplinary System

By: /s/ Mary M. Conrad
Mary M. Conrad, Counsel

Mary M. Conrad
Counsel for Administrator
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690

APPENDIX F

(Canon 4) "DR4-10: Preservation of Confidences and Secrets of a Client.

A. 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'Secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

B. Except when permitted under DR4-101(c), a lawyer shall not knowingly, during or after termination of the professional relationship to his client:

(1) Reveal a confidence or secret of his client. . . ."

No. 78-1193

In the
Supreme Court of the United States
OCTOBER TERM, 1978

DONALD S. CARNOW,
Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE STATE OF ILLINOIS,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

MELVIN B. LEWIS
315 South Plymouth Court
Chicago, Illinois 60604
(312) 427-2737
Attorney for Petitioner.

The Scheffer Press, Inc.--(312) 263-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1193

DONALD S. CARNOW,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE STATE OF ILLINOIS,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

To the Honorable, The Chief and Associate Justices of the Supreme Court of the United States:

Petitioner Donald S. Carnow, through counsel, herewith presents a supplemental brief, pursuant to the provisions of Rule 24 (5).

Petitioner seeks to call the attention of the Court to a recent decision of the Supreme Court of Illinois in a cause entitled *Miller* v. *Department of Registration and Education.* That opinion was announced on January 26, 1979, subsequent to the presentation of our petition for certiorari, presently pending before your Honors. It has not yet

been reported in any official or unofficial system, but is reprinted as an appendix to this supplemental brief.

Miller imparts dramatic emphasis to the basic argument of our pending petition. *Miller* demonstrates that in Illinois, no set meaning attaches to the term "immorality." It is therefore completely unpredictable whether any given conduct will be considered grounds for imposition of professional sanctions within Illinois. Accordingly, the determinations are likely to reflect consideration of factors such as that which distinguishes Petitioner Carnow from others who have been treated with lenity: those others had not been instrumental in the federal conviction of a dishonest state official. (Petition for Certiorari, pp. 11 et seq.)

Miller involved pharmacists who had been convicted in federal court of "offering and making a kickback or bribe" in connection with the furnishing of drugs under a federal program. (App. 1) Illinois law provides for revocation of pharmacist licenses upon a finding of "gross immorality." The *Miller* opinion holds—quite literally—that a conviction for paying bribes does not demonstrate "gross immorality", and therefore does not warrant interference with the offender's status as a pharmacist.

Concededly, there is a difference between a pharmacist and a lawyer. That difference, however, does not extend to the degree of damage which can be done by a morally insensitive practitioner within those respective professions. As the *Miller* opinion notes, a dishonest pharmacist can work grave mischief by the unauthorized dispensing of narcotics (App. pp. 5a-6a). If the dishonesty of a pharmicist is manifested by nothing more than the substitution of inferior ingredients in the compounding of prescriptions, the lives and health of thousands of innocent people may

be jeopardized. The public interest has no less serious stake in the integrity of pharmacists than in the integrity of lawyers.

The disparity between the reaction to the coerced payment in petitioner Carnow's case, and the reaction to the voluntary and opportunistic bribes paid by the *Miller* pharmacists, is simply not to be explained by any difference between pharmacists and lawyers in terms of the degree of public interest in assuring that practitioners are persons of integrity. The true difference may well be the distinction between Illinois' official reaction to the convicted federal defendant and its reaction to the victim who becomes a federal witness. As between the two, the latter receives the greater degree of scorn and opprobrium.

The ad hoc Illinois reaction to claims of turpitude, lends itself all too readily to the possibility of retaliatory employment of professional licensing machinery against persons who expose corrupt state officials to federal prosecution, while extending lenity to those (such as the pharmacists in *Miller*) who do not. A proper concern for the preservation of the usefulness of federal criminal process, requires a proper showing that no such consideration was operative against this Petitioner.

Respectfully submitted,

Melvin B. Lewis
315 South Plymouth Court
Chicago, Illinois 60604
(312) 427-2737
Attorney for Petitioner.

APPENDIX

Docket Nos. 50570, 50571, 50663 cons.—Agenda 15—November 1978.

SHELDON MILLER,

Appellee.

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION,

Appellant.

THEODORE DOLITSKY,

Appellee,

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION,

Appellant.

AARON FINN,

Appellant,

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION,

Appellee.

Mr. Justice Kluczynski delivered the opinion of the court:

The Director of the Department of Registration and Education (Department) revoked three pharmacists' licenses to practice pharmacy after an administrative determination that they were guilty of "gross immorality" under the Pharmacy Practice Act (Ill. Rev. Stat. 1973, ch. 91, par. 55.7-6, now Ill. Rev. Stat. 1977, ch. 111, par. 4019, as amended). The revocations were premised upon Federal

convictions following the entry of pleas of guilty by Theodore Dolitsky, Sheldon Miller and Aaron Finn to the Federal misdemeanor offense of offering and making a kickback or bribe in connection with the furnishing of drugs and pharmaceutical services for which payment is made in whole or in part out of Federal funds under an approved State medical assistance plan (42 U.S.C. sec. 1396h(b)(1) (1976)). The pharmacists filed three separate actions for administrative review in the circuit court of Cook County.

The complaints filed by Miller and Dolitsky were heard by Judge Richard L. Curry, who ruled that the term "gross immorality" is unconstitutionally vague; that the Federal misdemeanor offense to which Miller and Dolitsky pleaded guilty is not encompassed by the legislative proscription of "gross immorality"; and that the pharmacists did not receive a fair hearing before the State Board of Pharmacy since the Board was supplied with the entire 49-count indictment, although the pharmacists were convicted upon only one count following their guilty pleas. Judge Curry reversed the decision to revoke, and the Department filed the instant direct appeal under Rule 302(a) (58 Ill. 2d R. 302(a)) on the ground that the circuit court had held section 7-6 of the Pharmacy Practice Act (Ill. Rev. Stat. 1973, ch. 91, par. 55.7-6) invalid.

The complaint filed by Finn was heard by Judge Arthur L. Dunne, who found that the order of revocation was properly entered and affirmed the decision as not contrary to the manifest weight of the evidence or contrary to law. This court allowed Finn's motion for direct appeal under Rule 302(b) (58 Ill. 2d R. 302(b)) and consolidated all three appeals.

The pharmacists' licenses were revoked following three separate hearings before the State Board of Pharmacy. At each hearing certified copies of the Federal convictions were introduced as evidence. Copies of the multi-count indictments were attached to the complaints filed

with the Board, and in the cases of Miller and Dolitsky, they were admitted into evidence over the objection of counsel. In each case the Board found that the pharmacist had been convicted of the Federal misdemeanor and concluded that the conviction of such an offense constituted "gross immorality" within the meaning of the Pharmacy Practice Act. The Board recommended to the Director of Registration and Education that the pharmacists' licenses be revoked. After the denial of separate motions for rehearing, the Director accepted the findings, conclusions and recommendations of the Board and revoked the licenses of all three pharmacists.

The first issue we address is whether conviction of the Federal misdemeanor offense to which the pharmacists pleaded guilty may constitute a basis for the revocation of their licenses under the Pharmacy Practice Act (Ill. Rev. Stat. 1973, ch. 91, pars. 55.1 to 55.24). The pharmacists were convicted of paying kickbacks or bribes to nursing homes in connection with the furnishing of drugs and pharmaceutical services in violation of a Federal statute, which at the time the offenses were committed provided:

> "(b) Whoever furnishes items or services to an individual for which payment is or may be made in whole or in part out of Federal funds under a State plan approved under this subchapter and who solicits, offers, or receives any—
>
> (1) kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or
>
> (2) rebate of any fee or charge for referring any such individual to another person for the furnishing of such items or services
>
> shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $10,000 or imprisoned for not more than one year, or both." 42 U.S.C. sec. 1396h(b) (1976).

At the time the pharmacists committed the acts which formed the basis of the Federal misdemeanor convictions, the Pharmacy Practice Act (Ill. Rev. Stat. 1973, ch. 91, par. 55.7-6) provided that the Department of Registration and Education shall "[r]efuse to issue or renew, or revoke or suspend, any license or certificate of registration issued under the provisions of this Act or of any prior Act of this State when such registration is satisfactorily shown to have been obtained by fraudulent means, or when the applicant for or holder of such license or certificate has been convicted in this or any other state of any crime which is a felony under the laws of this state or convicted of a felony in a federal court, or is *found to be guilty of gross immorality,* or is found to have wilfully violated any of the rules and regulations promulgated for the administration of this Act or to be addicted to drugs to such a degree as to render him unfit to practice pharmacy in this state." (Emphasis added.) No express provision was made for revocation for the commission of misdemeanors or for the payment of bribes or kickbacks. Revocation of the licenses of the pharmacists was based on the general ground of "gross immorality."

The meaning attached to a statutory provision is derived from an examination of the language of the statute and its purpose (see *Village of Lombard* v. *Pollution Control Board* (1977), 66 Ill. 2d 503, 507). The statute should be evaluated as a whole; each provision should be construed in connection with every other section and in light of the statute's general purposes (*Neville* v. *Friedman* (1977), 67 Ill. 2d 488, 492; *Huckaba* v. *Cox* (1958), 14 Ill. 2d 126, 131).

The principal concern of the Pharmacy Practice Act, as provided in the legislative declaration, is with the protection of public health, safety, and welfare.

> "The Practice of Pharmacy in the State of Illinois is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further de-

> clared to be a matter of public interest and concern that the practice of pharmacy, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to practice pharmacy in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes." (Ill. Rev. Stat. 1973, ch. 91, par. 55.1.)

The Act is designed to assure, through regulations and control in the public interest, that only those who possess the requisite professional qualifications are licensed to practice pharmacy.

The term "practice of the profession of pharmacy," as defined in the Act, means "the compounding, dispensing, recommending or advising concerning contents and therapeutic values and uses, offering for sale or selling at retail, drugs, medicines or poisons, whether pursuant to prescriptions or orders of duly licensed physicians, dentists, veterinarians, or other allied medical practitioners, or in the absence and entirely independent of such prescriptions or orders, or otherwise whatsoever, or any other act, service operation or transaction incidental to or forming a part of any of the foregoing acts, *requiring, involving or employing the science or art of any branch of the pharmaceutical profession, study or training.*" (Emphasis added.) (Ill. Rev. Stat. 1973, ch. 91, par. 55.3(d).) The definition emphasizes the performance of acts requiring professional study and training in the science of pharmacy, rather than the business aspects of the practice of pharmacy.

The pharmacists and the Department place emphasis on *Gordon* v. *Department of Registration & Education* (1970), 130 Ill. App.2d 435, for the proposition that only convictions for misdemeanors which concern the practice of pharmacy constitute "gross immorality" within the intent and purpose of the Pharmacy Practice Act. The pharmacists argue that their misdemeanors did not concern the practice of pharmacy; the Department argues to

the contrary. In *Gordon* the pharmacist pleaded *nolo contendere* in the United States district court to two charges of dispensing drugs without a prescription in violation of Federal law. The State Board of Pharmacy determined that two separate sales of legend drugs without a prescription on the same date to the same person indicated a woeful disregard for regulations and was contrary to the public interest. The *Gordon* court noted that "[t]here are, indeed, many misdemeanors which are not concerned with professional practice and conviction upon such may not be a concern of public interest or welfare." 130 Ill. App. 2d 435, 439.

The payment of kickbacks or bribes is not concerned with the exercise of the professional skill of a pharmacist, the focus of the definition of the practice of pharmacy. Such conduct is related to matters extraneous to the central concern of the Pharmacy Practice Act, the protection of public health, safety, and welfare through regulation of the practice of pharmacy. A misdemeanor conviction for the payment of kickbacks or bribes is not "gross immorality" for purposes of pharmacy-license revocations.

Subsequent to the commission of the conduct which formed the basis for the pharmacists' Federal convictions, section 7-6 of the Pharmacy Practice Act was amended, effective August 27, 1975, to include fee splitting as a ground for license revocation (Ill. Rev. Stat. 1975, ch. 91, par. 55.7-6, now Ill. Rev. Stat. 1977, ch. 111, par. 4019). Fee splitting, as defined in section 10-1 of the Pharmacy Practice Act (Ill. Rev. Stat. 1975, ch. 91, par. 55.10-1, now Ill. Rev. Stat. 1977, ch. 111, par. 4032), encompasses the conduct which formed the basis for the plaintiff pharmacists' Federal misdemeanor convictions. Section 10-1 prohibits payments to employees, owners or managers of nursing homes of "any rebate, refund, discount, commission or other valuable consideration for, on account of, or based upon income received or resulting

from the sale or furnishing • • • of drugs or devices, prescriptions or any other service to patients." The amendment expressly including fee splitting as a basis for revocation is a further indication that such conduct was not included in the general term "gross immorality" (see *People ex rel. Gibson* v. *Cannon* (1976), 65 Ill. 2d 366, 373) and cannot constitute a basis for the revocation of the plaintiff pharmacists' licenses.

We hold it was error to revoke the plaintiff pharmacists' licenses on the ground of "gross immorality" based upon their convictions of a Federal misdemeanor offense involving the Payment of kickbacks or bribes. For this reason, the judgment reversing the revocation of Miller's and Dolitsky's licenses is affirmed. The judgment affirming the revocation of Finn's license is reversed. Because of our disposition of this cause, it is unnecessary for us to consider the constitutional issues raised.

50570 — Judgment affimed.

50571 — Judgment affirmed.

50663 — Judgment reversed.

MR. JUSTICE CLARK, dissenting.

No. 78-1193

In the
Supreme Court of the United States
OCTOBER TERM, 1978

DONALD S. CARNOW,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

REPLY ON CERTIORARI

MELVIN B. LEWIS
315 S. Plymouth Court
Chicago, Illinois 60604
(312) 427-2737
Attorney for Petitioner

The Scheffer Press, Inc.—(312) 263-6850

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1978

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REPLY ON CERTIORARI

May it please the Court:

The respondent Commission has made two arguments against this petitioner, at Points II and III of its Brief, neither of which should be permitted to pass without comment. (We disregard Point I of Respondents Brief, which is addressed to a different petitioner.)

II.

Respondent commences with an intemperate maladiction which is difficult to square with its role as arbiter of the ethical standards of the legal profession. Casting aside hyperbole, we are left with respondent's statement that the court below rejected this petitioner's contention that he was a victim of extortion.

To the contrary, the court below conceded, in line with the massive and uncontradicted evidence, that this petitioner was a victim. The decision below rests entirely upon the uncontradicted fact that the extortion money was paid—an accusation which could be made against almost any victim of a financial crime.

Among the findings below were the following: (App. 3a-4a)

> 1. There is no question but that the Respondents[1] were retained by Pecord for a lawful legal purpose, i.e. to obtain a zoning variance. Further, there is no question that Pecord's intentions were honorable and his desire to convert the Beverly building to a nursing home was a laudable thing.
>
> 2. Had the Respondents[1] failed to obtain the zoning variance their client, Pecord, would have lost considerable sums of money. It was, therefore, of great importance that the Respondents succeed.
>
> 3. Based on the record before us, we find that Pecord was entitled to the zoning variance he requested but that the variance was denied him because of political implications brought forward by the Ward Committeeman.
>
> 4. Stanley Zima, then the Secretary to the Committee of Building and Zoning was in a position to see to it that Pecord's request for a variance was either granted or denied. Zima demanded $20,000.00 for his "assistance" which meant that unless the extortion money was paid, no variance would be granted.
>
> • • •
>
> 6. Respondents[1] maintain and it is probably believable that they and their families were threatened

[1] The term "Respondent" as used in the findings, denotes the Petitioner in this Court.

by Zima with economic and bodily harm and that their client was threatened.

• • •

10. Respondents[1] cooperated with the federal investigation and with the United States Attorney in obtaining an indictment of Stanley Zima and as witnesses during the trial which resulted in the conviction of Zima for extortion.

There is no basis for the respondent's shrill suggestion that this petitioner is simply offering to this Court an "unproved factual defense" (Resp. Br. 6). There would be no basis for that assertion, even if it had been couched in professionally acceptable language.

III.

Finally, the respondent states that the Court should not intercede in this matter simply because, in the proceedings below, this petitioner was "afforded notice of the charge and an opportunity to defend". The same is true, however, of the disciplined lawyers whose cases were considered in *Spevack* v. *Klein*, 385 U.S. 411 (1967) and *In re Ruffalo*, 390 U.S. 544 (1968). Those cases, acknowledged as authoritative within the respondent's brief, amply refute the suggestion that notice and an opportunity to be heard are the only federal rights involved in a disbarment proceeding.

Respectfully submitted,

MELVIN B. LEWIS
315 S. Plymouth Court
Chicago, Illinois 60604
(312) 427-2737
Attorney for Petitioner